Filed 8/7/12 In re Kristopher D. CA2/2

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

| | |
|---|---|
| In re KRISTOPHER D., a Person Coming Under the Juvenile Court Law. | B236921<br>(Los Angeles County<br>Super. Ct. No. CK73674) |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>LARRY M.,<br><br>Defendant and Appellant. | |

APPEAL from an order of the Superior Court of Los Angeles County. Sherri Sobel, Juvenile Court Referee. Reversed and remanded with directions.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

Catherine C. Czar, under appointment by the Court of Appeal, for Minor.

* * * * * *

Appellant Larry M. appeals from the order terminating his parental rights as to the child Kristopher D.[1] He contends that the juvenile court acted without subject matter jurisdiction because there was no sustained Welfare and Institutions Code section 300[2] petition on file against him. He further contends that a number of procedural omissions invalidate the termination order. Finally, he claims that substantial evidence did not support the order.

Though we must conditionally reverse the order terminating parental rights because of the juvenile court's failure to provide proper notice under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.), we reject appellant's challenges to the order. The juvenile court properly assumed subject matter jurisdiction over Kristopher with the filing of a section 300 petition against his legal guardian, which it later amended to include a count against appellant pursuant to section 300, subdivision (g). As a biological rather than a presumed father, appellant was not entitled to the procedural safeguards he argues were lacking. In any event, appellant forfeited his right to challenge any procedural deficiencies and any omission in the advisements appellant received was harmless error. Finally, the juvenile court made the appropriate findings for and substantial evidence supported the termination of appellant's parental rights.

## FACTUAL AND PROCEDURAL BACKGROUND

***First Petition.***

In 2005, the probate court appointed maternal grandmother Mary B. (guardian) as the legal guardian for Kristopher, born in 2002 with fetal alcohol syndrome. He was developmentally delayed, most likely as a result of prenatal alcohol exposure. By 2007, Kristopher's younger brother Kenneth also resided with the guardian at the home of her

---

**1** At various places Kristopher has been spelled "Khristopher." However, we refer to him in accordance with the spelling in all Los Angeles County Department of Children and Family Services (Department) records.

**2** Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

companion, Rudolph S. The children's mother, Karen D. (mother), had a history of alcohol and drug abuse, was developmentally delayed and had been diagnosed as bi-polar. Between 2002 and 2008, the Department received 23 referrals about the family.

On June 23, 2008, the Department received a referral alleging domestic violence between Rudolph and the guardian which took place in front of Kristopher. The Department also learned that during a trip mother was allowed to be alone in a hotel room with Kristopher after she said she was having thoughts of wanting to have sex with him. It appeared that mother was living with the guardian. Mother was attending a mental health program, but admitted she continued to have thoughts about molesting Kristopher and abusing drugs and alcohol. She added that from age 18 to the present she had a consensual sexual relationship with Rudolph.

The Department investigated the prior referrals and, upon reviewing the guardian's Live Scan results, learned that she had numerous arrests for child endangerment and a conviction for incest. Although the guardian initially denied the arrests and conviction, she later stated that her mother had raised her four children. The conviction resulted from an incident where her alcoholic husband forced her at gunpoint to orally copulate her 14-year-old son.

Determining that the safety of the children was at risk, the Department detained Kristopher and Kenneth. The guardian identified appellant as Kristopher's father, but stated she thought he was deceased, and did not identify any other relatives for placement.[3] The Department's initial efforts to contact appellant were unsuccessful.

The Department filed its original section 300 petition solely against the guardian on July 16, 2008 (July 2008 petition), which alleged counts under section 300, subdivisions (b) and (d) on the basis of the guardian's sexual abuse of the children's uncle, history of substance abuse and creation of a detrimental environment by allowing mother access to the children even though she had thoughts of molesting Kristopher and

---

[3] Appellant has never been identified as Kenneth's father, and Kenneth is not a party to this appeal.

had driven him while under the influence of alcohol. At the detention hearing, the guardian indicated that the children's maternal grandfather might have some unknown Cherokee history. Mother completed an ICWA-020 form and indicated that she was or may be a member of the Cherokee tribe. Nonetheless, concluding there was no evidence that any family member was an enrolled member of a tribe, the juvenile court deemed the information to be "family lore" and declined to order that notice be provided under the ICWA. All subsequent reports adopted the juvenile court's finding that "no ICWA exists in this case."

The juvenile court found a prima facie case for detaining the children and ordered them detained in foster care. It further ordered that a family friend who appeared in court, Sandra L., be assessed for placement.

***Jurisdiction and Disposition*.**

The Department assessed Sandra's home to be suitable for placement and the children were placed with her on July 25, 2008.

The Department's August 6, 2008 jurisdiction/disposition report indicated that appellant was identified as Kristopher's father on his birth certificate; mother also verbally identified him as Kristopher's father. The report outlined the family's prior referrals and the extensive criminal histories of appellant, mother and the guardian. At the time of the initial report, appellant's whereabouts remained unknown. Attached to the report was a first amended section 300 petition which added allegations against appellant under subdivision (b) concerning his criminal history and under subdivision (g) for his failure to provide support for Kristopher. The Department served notice of the hearing on the petition and the first amended petition.

In a last-minute information submitted on August 6, 2008, the Department reported it had located appellant. He appeared at the hearing the same day. Though the juvenile court observed that appellant was not a party to the initial petition, it did not discuss or make any rulings related to the proposed first amended petition. It set the matter for a contested jurisdictional hearing.

In September 2008, the Department filed a section 388 petition seeking to rescind the legal guardianship. It thereafter filed a motion pursuant to section 728 to terminate the legal guardianship. Appellant appeared at the September 16, 2008 hearing on those matters. He indicated that a DNA test had confirmed his paternity of Kristopher and the juvenile court declared appellant to be Kristopher's biological father. He requested reunification services and the juvenile court permitted him monitored visitation.

With respect to the termination of the legal guardianship, the juvenile court made findings that it was in the children's best interests to set aside the guardianship and stated: "I set aside the legal guardianship of these children. I have no underlying petition. Having read the reports before me, I will amend to proof and file the underlying. There is an underlying petition, and I will dismiss that petition in its entirety, however, amend according to proof under a (g); that there's no appropriate parent or guardian ready, willing, and able to have these children at this time. So that (g) is sustained by a preponderance of the evidence." The juvenile court continued: "The (g) petition that has been sustained can be fought by the parents in two ways: One, that they are in fact ready, willing, and able to have their children; or, two, simply the dispositional portion, that they would like their children returned to them." On the face of the July 2008 petition, the clerk noted "dismissed" on September 16, 2008, but then crossed that out and wrote "re-instated" on the same date. The petition was not otherwise physically amended to reflect that only the count under section 300, subdivision (g) had been sustained.

At the hearing, the juvenile court then proceeded to set the matter for disposition. It directed the Department "to interview the parents and determine whether any other petitions will be filed. If not, and we're only working off the (g), then the Department needs to look at the parents as to their suitability."

On October 1, 2008, the Department filed another section 300 petition, containing allegations under subdivisions (b), (d) and (j) against mother, and under subdivisions (b) and (g) against appellant on the ground he had "failed to provide the child with the necessities of life including food, clothing, shelter and medical treatment." It also filed a detention and an addendum report that summarized its investigation of the family's prior

referrals and criminal history. At the October 1, 2008 hearing, the juvenile court indicated that the Department had the right to file the petition, deemed it filed, received appellants' and Mother's denials and joined all issues for the upcoming dispositional hearing. At that time, appellant signed a statement indicating that he had no information regarding any Indian ancestry affecting Kristopher.

On October 7, 2008, the Department filed a first amended section 300 petition which added allegations under subdivision (b) against appellant that his criminal history, history of substance and alcohol abuse, and mental and emotional problems, including hospitalization in August 2008 for suicidal ideation, placed Kristopher at risk. The Department's report filed in connection with that petition contained a statement from an interview with appellant in which he denied many of the petition's allegations but admitted to not having seen Kristopher during the past five years.

At the October 7, 2008 hearing, the juvenile court prefaced its rulings by stating that it and the parties had engaged in a "lengthy chambers conference" which resulted in the Department's request to dismiss the section 300 petition without prejudice. After the Department confirmed that it sought to dismiss all the petitions against the parents at that time, the juvenile court stated that "[a]ll of the petitions are being dismissed" and added that "[p]ursuant to 366.3, again I'm retaking jurisdiction of these children. The parents have a right dispositionally to request the children be placed back with them. They have asked to be heard on that issue." The juvenile court set the matter for a contested disposition hearing.

The minute order from the October 7, 2008 hearing indicated that the juvenile court dismissed the two petitions filed in October 2008, but left intact the July 2008 petition, and the Department's November 17, 2008 report for the disposition hearing confirmed that only the count under section 300, subdivision (g) remained against appellant. At the disposition hearing, the juvenile court summarized its position: "The Department—the parents are asking that I go to long-term foster care and provide six months of services with a (g) at this point. I would automatically go to a permanent plan or set a .26. I think what is appropriate here is to simply set a .26 and allow the

parents to file their 388 if they wish to have the children." Counsel for the Department, the children and Mother agreed with the juvenile court's ruling to set the matter for a permanency planning hearing under section 366.26, and appellant objected. At the hearing, appellant was served a copy of a form notice of intent to file a writ petition pursuant to California Rules of Court rules 39.1B and 1436.5, but he did not file it.

***Reunification Efforts.***

On November 24, 2008, appellant filed a section 388 petition requesting increased and unmonitored visitation, inclusion on educational and medical decisions affecting Kristopher and information about Kristopher's special needs and regional center workers. The juvenile court denied the petition, finding it neither set forth new evidence or changed circumstances, nor showed that any change of order would be in Kristopher's best interest.

Appellant filed a second section 388 petition in January 2009, seeking both the changes he sought in his first petition as well as the receipt of reunification services under section 366.22. In addition, mother filed a petition for reconsideration on the grounds that proper notice had not been given of the termination of the probate guardianship under section 728 and Probate Code section 1511, and that the dismissal of the section 300 petitions rendered the juvenile court without jurisdiction to set the matter for a permanency planning hearing under section 366.26. Mother also asserted that proper ICWA inquiry and notice had not been provided.

At the January 21, 2009 hearing, the juvenile court declined to set the section 388 petition for a hearing, asserting that the Department should have filed a section 300, subdivision (g) petition for it to retain jurisdiction over the children. It further asserted it had erroneously retained jurisdiction under section 366.3 given that the terminated guardianship was a probate guardianship. It directed the Department to file a section 300 petition. The Department did not do so. On January 30, 2009, the juvenile court reconsidered its previous rulings, finding that a section 300, subdivision (g) petition had already been sustained and determining that appellant and mother were entitled to six months of reunification services. Effectively granting both appellant's section 388

petition and mother's motion for reconsideration, it vacated the section 366.26 hearing date, directed the Department to prepare a disposition case plan, and ordered appellant and mother to undergo mental health evaluations under Evidence Code section 730.

In February 2009, appellant and mother signed a court-ordered disposition case plan. Appellant was ordered to participate in domestic violence counseling, parent education, an alcohol abuse program with random testing and individual counseling to address case issues, and directed to complete his mental health evaluation. He received monitored visitation twice a week. Appellant filed another section 388 petition in March 2009, seeking unmonitored and overnight visitation. Following a hearing during which appellant testified, the juvenile court ruled that while the requested change of order would not be in Kristopher's best interest at that point, the Department had the discretion to liberalize appellant's visitation.

The Department's July 31, 2009 report for the six-month review hearing characterized Kristopher as "a well adjusted child despite evident developmental delays affecting both his speech and motor skills development." The report added that he was thriving in his placement with Sandra and that appellant was generally in compliance with his case plan. The Department recommended that appellant's and mother's reunification services be terminated. With respect to appellant, the Department opined that his substance abuse, mental health problems and criminal behavior were indicators that he did not possess either the stability or the parenting skills required to handle a special needs child such as Kristopher. Moreover, appellant's mental health evaluation revealed his potential risk for alcohol abuse relapse.

Both the Department's six-month review report and an August 14, 2009 interim review report referred to the petitions that had been dismissed by the juvenile court rather than the July 2008 petition. At the contested six-month review hearing on August 24, 2009, the juvenile court admitted those reports into evidence and took judicial notice of prior findings and orders in the case. Appellant's counsel objected to the termination of appellant's reunification services and asked for the Department to provide conjoint therapy between appellant and Kristopher. Against the Department's recommendation,

the juvenile court offered six additional months of reunification services to appellant and mother, finding that they were in compliance with their case plan and that they showed the potential capacity to provide for the safety and well-being of their children.

In its February 22, 2010, 12-month review report, the Department indicated that while appellant remained largely in compliance with his case plan, there were signs he had been consuming alcohol and his visitation with Kristopher had become less frequent. The Department recommended that reunification services be terminated. Appellant opposed the recommendation. In a last-minute information submitted before the March 10, 2010 contested review hearing, the Department reported that appellant had appeared to be under the influence of alcohol during a telephone conversation, which was uncharacteristic for him.

At the beginning of the hearing, appellant withdrew his contest; his counsel stated that appellant had no legal basis to go forward but was requesting additional visitation with Kristopher. After admitting prior reports into evidence, the juvenile court terminated reunification services and found by a preponderance of the evidence that return to appellant would create a substantial risk of detriment to Kristopher. It set the matter for a permanency planning hearing pursuant to section 366.26. In view of appellant's recent relapses, the juvenile court ordered that while visitation could be increased, it must remain monitored. At the conclusion of the hearing, the clerk mailed to appellant copies of the documents necessary to challenge the juvenile court's ruling by extraordinary writ.

***Permanency Planning.***

The Department's July 7, 2010 section 366.26 report indicated that the current caregiver Sandra was no longer interested in adoption. The Department maintained that the children were adoptable notwithstanding their special needs. The juvenile court continued the hearing for six months to enable the Department to locate another adoptive family. Six months later in January 2011, the juvenile court ordered an additional six-month continuance for the same purpose. In April 2011, the juvenile court permitted the

Department discretion to move the children to a prospective adoptive home with the concurrence of their counsel.

At the end of April 2011, Kristopher and his brother were placed in a prospective adoptive home with a family having an approved homestudy on file. In July 2011, the Department reported that Kristopher was adjusting well to his new placement. The juvenile court declined to grant appellant's request to increase his visitation, instead specifying that it be restricted to two times per month.

In an October 2011 report, the Department described an incident where appellant became angry following a visit and the social worker felt fearful. The social worker had also noted that appellant smelled of alcohol during more than one visit. The Department recommended that parental rights be terminated. At the October 12, 2011 hearing, the juvenile court received the Department's reports into evidence. Appellant testified that he opposed the Department's recommendation. He stated that he had been visiting Kristopher regularly, even after reunification services had been terminated, and that Kristopher called him "daddy" and called his mother "nana." He testified that he had a strong relationship with Kristopher and loved him very much; he hoped to change to be a good father to him. He added that he thought it was important for Kristopher to remember his mother and father.

The juvenile court found by clear and convincing evidence that Kristopher was adoptable and that no exceptions to termination had been shown. Accordingly, it terminated appellant's parental rights and implemented a permanent plan of adoption for Kristopher.

Appellant timely appealed.

## DISCUSSION

Appellant challenges the order terminating his parental rights on three grounds—the juvenile court's lack of subject matter jurisdiction and failure to comply with procedural rules, and insufficient evidence. We find no merit to his challenges.

## I. The Juvenile Court Properly Assumed Subject Matter Jurisdiction Over Kristopher.

Appellant contends that the order terminating his parental rights is void because the juvenile court lacked subject matter jurisdiction to proceed. To support his claim, he contends the juvenile court dismissed all petitions involving him prior to termination. We independently determine the presence or absence of subject matter jurisdiction in a juvenile dependency proceeding. (*In re A. C.* (2005) 130 Cal.App.4th 854, 860.) Appellant's claim fails both on the basis of the law and the record.

As explained in *In re Claudia S.* (2005) 131 Cal.App.4th 236, 245 to 246: "'Lack of jurisdiction' is a term used to describe situations in which a court is without authority to act. [Citation.] The Uniform Child Custody Jurisdiction and Enforcement Act (the Act) (Fam. Code, § 3400 et seq.) is the exclusive method for determining subject matter jurisdiction for custody proceedings in California, and its provisions apply to juvenile dependency proceedings. (Fam. Code, § 3402, subd. (d); *In re Stephanie M.* (1994) 7 Cal.4th 295, 310.) Under the Act, a California court has jurisdiction in a dependency case if California was the child's home state when the proceeding commenced, with 'home state' defined as the state in which the child lived with a parent for at least six consecutive months immediately before the commencement of the proceeding. [Citations.]" Here, it was undisputed that Kristopher had been living with his guardian in California for several years before the Department filed its section 300 petition. Thus, the subject matter jurisdiction requirements for a dependency proceeding were satisfied. (See *In re A.R.* (2012) 203 Cal.App.4th 1160, 1170 ["The filing of A.R.'s dependency petition vested the juvenile court with subject matter jurisdiction"].)

Appellant's argument that the absence of a petition rendered the juvenile court without subject matter jurisdiction could be compared to a personal jurisdiction challenge. "The court does not take jurisdiction over the parent; it takes jurisdiction over the child. [Citation.] Personal jurisdiction over a parent in dependency proceedings is obtained when the parent is properly noticed, because notice gives the parent the choice whether to appear in the dependency proceeding. [Citations.]" (*In re Daniel S.* (2004)

115 Cal.App.4th 903, 916, fn. omitted; see also *In re Claudia S., supra,* 131 Cal.App.4th at p. 247 ["the absence of due process notice to a parent is a 'fatal defect' in the juvenile court's jurisdiction"].) But appellant does not dispute that he received notice of all proceedings and actively participated in the dependency proceedings for well over three years.

The sole basis for appellant's subject matter jurisdiction claim is his contention that the juvenile court dismissed all petitions against him. By characterizing the record in this manner, he hopes to fall within *In re A.R., supra,* 203 Cal.App.4th at page 1170, where the appellate court determined that the juvenile court lacked jurisdiction to make a visitation order for a child after it had dismissed the section 300 petition involving him. The key problem with appellant's argument is that the record does not support it.

The Department initially filed the July 2008 petition against Kristopher's guardian. When appellant first appeared in September 2008, the juvenile court had before it a proposed first amended petition that added allegations against him under section 300, subdivision (g) for his failure and inability to provide support for Kristopher. At the September 16, 2008 hearing, the juvenile court terminated Kristopher's guardianship and then stated: "Having read the reports before me, I will amend to proof and file the underlying. There is an underlying petition, and I will dismiss that petition in its entirety, however, amend according to proof under a (g); that there's no appropriate parent or guardian ready, willing, and able to have these children at this time. So that (g) is sustained by a preponderance of the evidence." The September 16, 2008 minute order likewise reflected the sustaining of a petition under section 300, subdivision (g). Also consistent with the juvenile court's ruling, the clerk wrote "dismissed" on the face of the July 2008 petition, crossed out that word and wrote "re-instated" as of September 16, 2008. In view of the minute order and the juvenile court's oral ruling sustaining the petition as amended under section 300, subdivision (g), we decline to infer a contrary intent from the absence of any interlineation on the petition itself. (See, e.g., *In re Merrick V.* (2004) 122 Cal.App.4th 235, 249 ["Conflicts between the reporter's and clerk's transcripts are generally presumed to be clerical in nature and are resolved in

favor of the reporter's transcript unless the particular circumstances dictate otherwise"]; *In re Josue G.* (2003) 106 Cal.App.4th 725, 731, fn. 4 [conflicts in the record harmonized in favor of the reporter's transcript].)

Subsequently, the Department filed a section 300 petition on October 1, 2008 and a first amended petition on October 7, 2008, both of which included additional allegations against appellant. At the October 7, 2008 hearing, following what the juvenile court characterized as a "lengthy chambers conference," the Department indicated that it sought to dismiss its petitions against Kristopher's parents and—in a phrase often cited by appellant—the juvenile court stated "[a]ll of the petitions are being dismissed." The juvenile court indicated that it was retaining jurisdiction, however, under section 366.3 and set the matter for a contested disposition hearing. The October 7, 2008 minute order provided that the juvenile court's dismissal applied only to the two petitions filed in October 2008, and that the children remained subject to the court's jurisdiction under section 300, subdivision (g). Similarly, the clerk wrote "Dismissed 7 Oct 2008" on the face of the October 2008 petitions only. While conflicts in the record are generally harmonized in favor of the reporter's transcript, an ambiguity in the reporter's transcript may be clarified by the clerk's transcript. (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1018 [clerk's transcript included limiting phrase that prevented probation condition from being unconstitutionally vague].) Here, the minute order and clerk's notations clarified that the dismissal of "all" petitions applied to those filed by the Department immediately preceding the October 7, 2008 hearing.

Though there was some confusion about the status of the case in early 2009, subsequent events likewise confirmed the juvenile court's intent to leave the section 300, subdivision (g) petition intact. At a January 21, 2009 hearing, the juvenile court acknowledged that it had erroneously stated jurisdiction could be sustained under section 366.3 and directed the Department to file a section 300 petition. A few days later, however, at a January 30, 2009 hearing, the juvenile court reconsidered its previous direction on the basis that a section 300, subdivision (g) petition had already been

sustained. It determined that appellant should receive at least six months of reunification services and directed the Department to prepare a disposition case plan.

Accordingly, the record showed that at all times a section 300 petition containing allegations under subdivision (g) against appellant was on file, providing the juvenile court "with subject matter jurisdiction, i.e., the inherent authority to deal with the case or the matter before it." (*In re A.R., supra,* 203 Cal.App.4th at p. 1170.)

## II. Appellant May Not Challenge Rulings Preceding the Termination of His Parental Rights.

Appellant's next complaint is that the juvenile court failed to comply with several procedural requirements embodied in the California Rules of Court[4] during the initial proceedings and failed either to adjudicate the petition or hold a disposition hearing. We find no merit to his claims.

Preliminarily, we agree with the Department and Kristopher that appellant was not entitled to the procedures he asserts were lacking because he was never declared to be Kristopher's presumed father. Rather, he was initially found to be Kristopher's alleged father and later declared to be his biological father. "In dependency proceedings, 'fathers' are divided into four categories—natural [or biological], presumed, alleged, and de facto. [Citation.]" (*In re A.A.* (2003) 114 Cal.App.4th 771, 779.) "A biological father is one whose paternity is established, but who does not qualify as a presumed father." (*In re J.O.* (2009) 178 Cal.App.4th 139, 146.) "'A father's status is significant in dependency cases because it determines the extent to which the father may participate in the proceedings and the rights to which he is entitled. [Citation.]'" (*In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120.) Only a presumed father is entitled to custody or a reunification plan. (*Ibid*.)

A biological father who claims entitlement to presumed father status has the burden of establishing by a preponderance of the evidence the facts supporting his

---

[4] Unless otherwise indicated, all rules citations are to the California Rules of Court.

entitlement. (*Adoption of O.M.* (2008) 169 Cal.App.4th 672, 679; *In re T.R.* (2005) 132 Cal.App.4th 1202, 1210.) Below, the evidence showed that appellant's name appeared on Kristopher's birth certificate. Though appellant did not offer this argument below, he contends that this evidence established his entitlement to presumed father status. He cites Health and Safety Code section 102425, subdivision (a)(4), which provides in part that "[i]f the parents are not married to each other, the father's name shall not be listed on the birth certificate unless the father and the mother sign a voluntary declaration of paternity at the hospital before the birth certificate is prepared." In turn, "[a] voluntary declaration of paternity entitles the man who signs it to presumed father status. [Citation.]" (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 163.) Though no voluntary declaration of paternity appears in the record, appellant contends that the fact his name appears on the birth certificate created a presumption that he signed such a declaration, thereby entitling him to presumed father status.

The court in *In re D.A.* (2012) 204 Cal.App.4th 811, 826, recently rejected this precise contention. There, the appellate court concluded that the fact the mother's boyfriend's name appeared on her child's birth certificate did not entitle the boyfriend to presumed father status. Observing that the record did not contain a voluntary declaration of paternity executed by the boyfriend, the appellate court summarized his position, which was that Health and Safety Code section 102425, subdivision (a)(4), together with Evidence Code section 664, entitled him to a presumption that he executed a declaration because his name appeared on the child's birth certificate. (*In re D.A.*, *supra*, at p. 826.) Though acknowledging that such a presumption had been applied in *In re Raphael P.* (2002) 97 Cal.App.4th 716, 736–739, the court determined: "No such presumption applies here, however, because the record contains no evidence that the relevant members of the hospital staff (or any members at all) were aware that mother and E.A. were not married." (*In re D.A.*, *supra*, at pp. 826–827.) Likewise, because appellant offered no evidence to suggest that anyone involved in the preparation of Kristopher's birth certificate was aware that he and mother were not married, there is no factual basis in the

record to support the presumption. Accordingly, appellant failed to meet his burden to show his entitlement to presumed father status.

Nonetheless, appellant contends that even as Kristopher's biological father, he was entitled to certain advisements during the initial stages of the proceedings, including a reading of the petition (rules 5.668(a), 5.682(a)) and a recitation of his hearing rights (rules 5.534(k), 5.682(b)). We conclude that appellant has forfeited this contention for several reasons. First, he did not object to the manner in which the juvenile court conducted any hearings. "A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court. [Citations.] Forfeiture, also referred to as 'waiver,' applies in juvenile dependency litigation and is intended to prevent a party from standing by silently until the conclusion of the proceedings. [Citations.]" (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221–222; accord, *In re Levi U.* (2000) 78 Cal.App.4th 191, 201 [rejecting due process claim not raised below]; see also *In re Seaton* (2004) 34 Cal.4th 193, 198 [forfeiture applies to claims of statutory error and to claims of violation of fundamental constitutional rights].) Second, appellant actively participated in Kristopher's dependency proceedings for over three years. (See *In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1037 [father waived any defects in petition by proceeding to litigate the matter on the merits].) Finally, appellant failed to appeal from either the jurisdictional or dispositional orders. It is well settled that "'"an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order." [Citation.]' [Citation.]" (*In re S.B.* (2009) 46 Cal.4th 529, 532.)

Even if appellant had not forfeited his claims, they would afford no basis for reversal of the termination order. The failure to provide adequate advisements in a juvenile dependency proceeding is typically reviewed for harmless error. (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1377–1378; see also *In re Patricia T.* (2001) 91 Cal.App.4th 400, 406–407 [reviewing adequacy of advisements in connection with a no contest plea to a dependency petition under the same test used to review those required for a voluntary and knowing guilty plea].) While the record indicated intermittent

uncertainty during the initial stages of the matter regarding what section 300 count or counts had been sustained against appellant in the July 2008 petition, by January 2009 the juvenile court clarified that only a single count under section 300, subdivision (g) had been sustained and exercised its discretion to provide reunification services to appellant. Represented by counsel throughout the proceedings, appellant availed himself of reunification services and made significant efforts to reunify with Kristopher. Ultimately, however, he was unable to do so after having an angry confrontation with a social worker and exhibiting behavior consistent with alcohol abuse. In view of this record, any failure to provide complete advisements as specified by the California Rules of Court was harmless error.

Finally, we reject appellant's other procedural contention that the juvenile court failed to hold either an adjudication or a disposition hearing. The record showed that the juvenile court adjudicated the matter at the September 16, 2008 hearing—at which appellant was present and represented by counsel—stating "that there's no appropriate parent or guardian ready, willing, and able to have these children at this time. So that (g) is sustained by a preponderance of the evidence." The juvenile court set the matter for a disposition hearing. Appellant appeared at the initial November 2008 disposition hearing when the juvenile court terminated his reunification services. He was again present at the January 2009 hearing when the juvenile court reconsidered its prior disposition and permitted him to participate in a court-ordered disposition case plan. The record establishes that the juvenile court properly entered both adjudication and disposition orders after holding hearings in which appellant participated.

## III. Substantial Evidence Supported the Termination of Appellant's Parental Rights.

Appellant also challenges the order terminating his parental rights on the grounds that the juvenile court failed to make the requisite findings and there was insufficient evidence to support the order. Though his arguments are premised primarily on his

contentions about the absence of a filed petition and inadequate advisements which we have already rejected, we briefly address his claims.

Appellant contends that his parental rights could not be terminated without any finding that it would be detrimental for Kristopher to be placed with him. But because appellant never achieved presumed father status, no finding of detriment was required; rather, the juvenile court's sole focus was Kristopher's best interests. (Fam. Code, § 7664, subd. (b) [where a biological father claims parental rights, "[t]he court shall then determine if it is in the best interest of the child that the father retain his parental rights, or that an adoption of the child be allowed to proceed"]; *In re A.S.* (2009) 180 Cal.App.4th 351, 362 [where biological father not found to be the presumed father, "the court was not required to make a particularized finding of unfitness or detriment before terminating his parental rights and instead was entitled to focus on [the child's] best interests"]; *Adoption of Arthur M.* (2007) 149 Cal.App.4th 704, 722 [rejecting argument that biological father has a fundamental right to parent absent a finding of unfitness and emphasizing "no finding of detriment or parental unfitness is required" because "'[t]he child's best interest is the *sole criterion where there is no presumed father*'"].) In any event, at the disposition hearing and again at each review hearing the juvenile court found that appellant was not prepared to have custody of Kristopher and that it would be detrimental to Kristopher to place him with appellant.

Finally, substantial evidence supported the juvenile court's termination of appellant's parental rights and, specifically, its finding that appellant failed to demonstrate the existence of any exception to termination. Appellant advocated for the application of the beneficial parental relationship exception to termination of parental rights found in section 366.26, subdivision (c)(1)(B)(i), which provides for an exception to the preferred permanent plan of adoption where a parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." At the termination hearing, appellant testified that he had a strong relationship with Kristopher. He visited him regularly and Kristopher called him "daddy." He believed it was important for Kristopher to know his father.

Appellant had the burden to establish the beneficial relationship exception (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534) and we agree with the juvenile court that he failed to meet his burden. Though the evidence showed that appellant had maintained regular visitation, he never progressed beyond monitored visitation. (See *In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108–1109.) Moreover, appellant failed to show that Kristopher would benefit from maintaining their relationship. As explained in *In re Mary G.* (2007) 151 Cal.App.4th 184, 207: "A parent must show more than frequent and loving contact or pleasant visits. [Citation.] 'Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment between child and parent. [Citation.]" (Fn. omitted.) Beyond Kristopher calling appellant "daddy," appellant failed to offer evidence that he occupied a parental role in Kristopher's life. (See *In re Helen W.* (2007) 150 Cal.App.4th 71, 81 [children calling mother "Mom" and mother's demonstrated love for her children held insufficient to show mother could meet children's needs].) On the other hand, the Department offered evidence that Kristopher was thriving with his prospective adoptive parents, who were willing and able to address Kristopher's special needs. Appellant failed to demonstrate the type of parent-child relationship that triggers the exception because it "'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. . . .' [Citation.]" (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.)

## IV. The Juvenile Court Failed to Provide Proper Notice Under the ICWA.

At the detention hearing, the guardian—Kristopher's maternal grandmother—indicated that her deceased husband might have some Cherokee history. Mother likewise averred on an ICWA-020 form that she was a member or may be eligible for membership in a Cherokee tribe, she may have Indian ancestry and one or more of her ancestors was a member of the Cherokee tribe. Notwithstanding these representations by the guardian and mother, the juvenile court stated: "At this point I have no reason to know this is an

American Indian case for the Cherokee Nation. There is some family lore and no way of getting any further information, and no information that either of these children or the mother or the grandfather was an enrolled member of the nation. . . . Kristopher is not a member. [Appellant] is not a member. His mother was not a member, and we have no further information than that." The minute order for the hearing reflected the juvenile court's findings, providing "court finds no reason to believe that this is an ICWA case." Thereafter, the Department's reports provided that "no ICWA exists in this case." In connection with her January 2009 motion for reconsideration, mother contended that proper ICWA inquiry and notice had not been made and requested "[t]hat the court make proper ICWA inquiry and findings in this case." At the hearing on the motion for reconsideration, the juvenile court did not address the issue of ICWA notice.

We recently explained in *In re Gabriel G.* (2012) 206 Cal.App.4th 1160 that "Congress passed the ICWA in 1978 'to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children "in foster or adoptive homes which will reflect the unique values of Indian culture . . . ."' [Citations.]" To ensure a tribe's right to intervene to protect the interests of the child in retaining tribal ties and the interests of the tribe in preserving future generations, "the ICWA requires 'where the court knows or has reason to know that an Indian child is involved,' the party seeking termination of parental rights must, in relevant part, notify the Indian child's tribe of the pending proceedings and its right to intervene. [Citations.]" (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) Because the right to intervene is meaningless unless the tribe receives notification, the ICWA's notice requirements are strictly construed. (*In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1267.) We review a juvenile court's ICWA findings for substantial evidence. (*In re E.W.* (2009) 170 Cal.App.4th 396, 404.)

Though appellant has not challenged the termination order on the ground of inadequate ICWA notice, the Department has candidly acknowledged that further inquiry into Kristopher's possible Native American ancestry is necessary. (See *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1195 ["the forfeiture doctrine does not bar consideration of

ICWA notice issues on appeal"]; *In re Nikki R.* (2003) 106 Cal.App.4th 844, 849 [adequacy of ICWA notice not waived by appellant's failure to raise it].) The law is well established that only a suggestion of Indian ancestry is sufficient to trigger the notice requirement under the ICWA. (*In re Gabriel G., supra,* 206 Cal.App.4th at p. 1165; accord, *In re Miguel E.* (2004) 120 Cal.App.4th 521, 549 ["The showing required to trigger the statutory notice provisions is minimal" and "[a] hint may suffice for this minimal showing"]; *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408 ["the bar is indeed very low to trigger ICWA notice"].) The evidence here was far more than a suggestion or hint—both the guardian and mother represented that Kristopher had Cherokee ancestry through his maternal grandfather. Their statements were sufficient to trigger the ICWA's notice requirement. (E.g., *In re Alice M., supra*, at p. 1198 [parent's statement that child may be eligible for membership in Apache and/or Navajo tribe sufficient to trigger notice requirement, even without information about tribal affiliation or tribal roll number]; *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 256–258 [parents' statement that child has "Cherokee Indian heritage" sufficient to trigger notice under the ICWA].) Substantial evidence did not support the juvenile court's contrary conclusion that the information provided was nothing more than "family lore" inadequate to trigger the notice requirement.

Because the juvenile court did not provide the notice required under the ICWA, we reach the same conclusion as in *In re Gabriel G., supra,* 206 Cal.App.4th at p. 1168: "[T]he court's order terminating parental rights must be conditionally reversed. This 'does not mean the trial court must go back to square one,' but that the court ensures that the ICWA requirements are met. [Citations.] 'If the only error requiring reversal of the judgment terminating parental rights is defective ICWA notice and it is ultimately determined on remand that the child is not an Indian child, the matter ordinarily should end at that point, allowing the child to achieve stability and permanency in the least protracted fashion the law permits.' [Citation.]" (Fn. omitted.)

## DISPOSITION

The order terminating parental rights is reversed and the case is remanded to the juvenile court with directions to order the Department to provide each of the Cherokee tribes with proper notice of the proceedings under the ICWA. If, after receiving proper notice, no tribe indicates Kristopher is an Indian child within the meaning of the ICWA, then the juvenile court shall reinstate the order terminating parental rights.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ